

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3638 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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PARESH BHAGWANDAS THAKKAR

Versus

DISTRICT MAGISTRATE

Appearance:

MR RC GODEKAR FOR MR VIJAY H PATEL for Petitioner
MR NIGAM SHUKLA, APP for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/10/96

ORAL JUDGEMENT

Through this Special Civil Application, detention order dated 19th April, 1996 passed by the District Magistrate, Kheda, detaining the petitioner under the provisions of the Gujarat Prevention of Antisocial Activities Act,1985 has been sought to be challenged. The detention order dated 19th April, 1996 was executed on 21st April,1996 and since then the petitioner is under detention lodged at Jamnagar Jail, Jamnagar.

The present Special Civil Application was filed on 14th May, 1996 and on 15th May, 1996 rule returnable

by 24th June, 1996 was issued but so far neither any reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

The grounds of detention enclosed with the detention order show that eight criminal cases were registered against the petitioner at Chaklasi Police Station with regard to the unauthorized business of country liquor and foreign liquor by the petitioner and in all the eight matters, the trial was pending before the Court. In these matters the quantity of liquor involved is one to six litres except that in one case , , it was 141 bottles of foreign liquor. The detaining authority noted the allegations of these eight criminal cases and has also noted that the petitioner had created a sense of insecurity on account of his antisocial activities and has referred to the statements made by four witnesses who have stated against the petitioner's unlawful and antisocial activities- use of sharp edged weapons, the acts of dadagiri and the allegations of nonpayment of the money to the shop keepers even after taking the goods from them. The witnesses had also deposed that they were frightened and afraid of the petitioner. The petitioner has thus become a problem for the public order. The detaining authority has mentioned in detail the unlawful and antisocial activities of the petitioner and his dealings and his business of liquor and has found that the provisions under Section 93 of the Bombay Police Act will not serve the purpose and the petitioner was required to be detained and accordingly, the detention order was passed.

Although the detention order has been challenged on more than one grounds, the learned Counsel for the petitioner has laid stress on the ground that the allegations as has been levelled against the petitioner even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order and the detention order therefore deserves to be quashed and set aside on this ground alone.

I have considered the allegations and materials relied upon against the petitioner by the detaining authority while passing the impugned detention order. On 4th October, 1996 itself a detailed order has been passed in Spl.Civil Application no.3879/1996 in which a considered view has been taken on the basis of the ratio

decedendi of several Supreme Court decisions and the decision of this Court that the allegations and materials such as has been relied upon in the present case do not constitute a case of breach of public order and at the most it can be said to be a breach of law and order. The aforesaid decision applies on the facts of this case with full force and I find that the impugned order of detention has been passed on the collateral ground of law and order. In absence of any ingredients of the breach of public order, the impugned detention order deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 19th April, 1996 passed by the District Magistrate, Kheda is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

sf-mrc